IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

Cr.Appeal No. 109 of 2007

Date of Decision: 27-12-2007

Gopal Singh. Appellant.

Versus

State of H.P. Respondent.

Coram

Hon'ble Mr. Justice Surinder Singh, J.

Whether approved for reporting[1]? No.

For the appellant : Shri B.R.Kashyap & Sh. Ajay Baluja Advocates

For the respondent : Shri D.S.Nainta, Dy. Advocate General.

SURINDER SINGH, J. (oral)

The appellant has felt aggrieved and dis-satisfied by the judgment of conviction and sentence passed by learned trial Court under Section 20 (b) (ii) (B) of the Narcotic Drugs & Psychotropic Substances Act, 1985, in short the 'Act' allegedly for being in possession of 930 grams of charas, as such he was sentenced to undergo imprisonment for a period of three years and to pay a fine of Rs. 50,000/-. The appellant has challenged his conviction and sentence in the instant appeal.

I have heard the learned counsel for the parties and have carefully gone through the evidence on record.

Precisely, the case of the prosecution is that on 7.12.2004 at about 5.15 P.M. Inspector/S.H.O. Police Station Sadar Brijesh Kumar (PW10) was on patrolling with other police officials. He saw the appellant with a blue colored bag at the General Bus Stand, Shimla. On noticing the Police

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Whether reporters of the Local papers are allowed to see the judgment? Yes.

Party, the appellant got perplexed, as such, Brijesh Kumar Inspector enquired about his identity. During the enquiry, PW1 Joginder Singh and PW2 Gulab Chand were associated and the Police Inspector checked the bag held by the appellant in his hand. On checking he found it containing 930 grams Charas in the form of small sticks. From the total quantity of 930 grams of charas, two samples of 20 grams each were taken and sealed separately with seal impression 'H'. The remaining bulk was also sealed with the same seal. The seal after its use was handed over to PW Joginder Singh. After filling up NCB Form and completing all the formalities, the case property was taken into possession vide memo Exhibit PA which was signed by Joginder Singh (PW1) and Gulab Singh (PW2) aforesaid. A ruka Exhibit PW10/A was sent for the registration of the case on the basis of which FIR Exhibit PW7/A was formally registered. The appellant was arrested and the grounds of arrest were informed to him. The case property was deposited with the M.H.C. A special report Exhibit PW6/A was also sent to Superintendent of Police, Shimla. The sample was sent for analysis through Constable Pardeep Kumar (Pw).On analysis, it was found having the contents of charas. After completing the investigation, challan against the appellant was presented before the trial court.

Finding a prima facie case against the appellant, he was charge-sheeted for the offence aforesaid under the Act. Appellant pleaded not guilty to the charge and claimed trial.

To prove this case, the prosecution examined its witnesses and after hearing the parties and upon going through the evidence on record, learned trial Court convicted and sentenced the appellant as mentioned above.

Precisely, now the question which arises for determination in appeal is whether it was contraband article which was recovered from the appellant?

To answer the above query, a reference is required to be made to the statement of the Investigating Officer Brijesh Sood who has stated before the trial Court that after separating the samples, the case property was sealed with seal impression 'H' and after complying with other provisions of the Act, the same was deposited with the M.H.C. On a perusal of the statement of Ashwani Kumar MHC (PW8), it reveals that the said investigating officer had deposited the sample parcel sealed with seal impression 'T'. The identity of the case property is disputed. Even, MHC has not spelt out the details of the case property deposited with him. Further, according to him, he had handed over the NCB form and specimen impression to Pardip Kumar constable for its deposit in C.T.L. Kandaghat vide RC No. 127 of 2004. Even the copy of the road certificate is also not produced on record in order to show as to what was the actual seal on the sample so sent for examination. Facsimile of the seal is also not contained in Part-I of the NCB form Exhibit PW10/C. In view of this, the statement of PW4 Constable Pardip Kumar cannot be taken as a gospel truth that he had delivered the sample parcel of this case for analysis with CTL Kandaghat. So much so, said Pardip Kumar has not stated about the road certificate number or the docket against which he carried the sample parcel, NCB form and sample of seal to CTL Kandaghat on 9.12.2004. The best evidence, i.e, road certificate which could have thrown light has been with-held, therefore, adverse inference has to be drawn, against the prosecution.

Further, according to the case of the prosecution, the seal after its use was handed over to Joginder Singh (PW1) but he did not say so when examined in the Court. Even he as well as Gulab Chand (PW2) both have

not stated about the use of the seal after the alleged recovery, by the Investigating Officer. In these circumstances, in my considered opinion, a reasonable doubt has been created as to whether the sample which was taken by the Investigating Officer was the same which was examined in Central Testing Laboratory Kandaghat in order to show that the recovered substance from appellant was that of charas.

For the reasons aforesaid, the finding of guilt returned by the trial Court is un-sustainable, accordingly conviction and sentence passed by the learned trial Court is set aside. The appellant is acquitted by giving him benefit of reasonable doubt. Consequently, the appellant be set at liberty forthwith, if not required in any other case.

(Surinder Singh)
Judge.

December 27, 2007.
(bm)